

NAHC Most Likely Descendants Subcommittee
Proposed Draft Regulations for General Provisions and the Most Likely Descendants
Identification Process, Public Resources Code Section 5097.98
January 20, 2017 Commission Meeting

CALIFORNIA CODE OF REGULATIONS, TITLE 14, NATURAL RESOURCES

Division 17, Native American Heritage Commission

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Article 1 Interpretation and Purpose of Regulations

§ 29001 Purpose of Regulations

The regulations of the Native American Heritage Commission (NAHC) implement and interpret Government Code sections 65092, subdivision (b), 65351, subdivision (a)(1), 65352, 65352.3, subdivisions (a)(1) and (a)(2), 65352.4 and 65562.5; Health and Safety Code section 7050.5; the California Native American Graves Protection and Repatriation Act, Division 7, Part 2, Chapter 5 of the Health and Safety Code (Health and Safety Code section 8010 et seq.); Division 5, Chapter 1.75 of the Public Resources Code (Public Resources Code sections 5097.9 through 5097.991); the Native American Historic Resource Protection Act, Division 5, Chapter 1.76 of the Public Resources Code (Public Resources Code sections 5097.993 and 5097.994); Sections 21073 and 21080.3.1 of the Public Resources Code; and as all of them as they may be amended from time to time. No attempt has been made to reproduce in these regulations all of the definitions, policies, and other provisions found in these Acts and statutes. Therefore, these regulations should be read together with these Acts and statutes.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 65092, 65351, 65352, 65352.3, 65352.4, 65562.5, Government Code; Sections 7050.5, 8010, 8011, 8012, 8013, 8014, 8015, 8016, 8017, 8018, 8019, 8020, 8021, 8029, 8030, Health and Safety Code; Sections 5097.9, 5097.91, 5097.92, 5097.93, 5097.94, 5097.95, 5097.96, 5097.97, 5097.98, 5097.99, 5097.991, 5097.993, 5097.994, 21073 and 21080.3.1, Public Resources Code.

§ 29002 Interpretation of Regulations

These sections are adopted severally. If one or more of these sections is deemed invalid, the remaining sections are intended to remain in effect.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 65092, 65351, 65352, 65352.3, 65352.4, 65562.5, Government Code; Sections 7050.5, 8010, 8011, 8012, 8013, 8014, 8015, 8016, 8017, 8018, 8019, 8020, 8021, 8029, 8030, Health and Safety Code; Sections 5097.9, 5097.91, 5097.92, 5097.93, 5097.94, 5097.95, 5097.96, 5097.97, 5097.98, 5097.99, 5097.991, 5097.993, 5097.994, 21073 and 21080.3.1, Public Resources Code.

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§ 29003 Explanation of References

References in these regulations to "Chapter ____", "Subchapter ____", "Article ____", "Section ____", and Paragraph (____)," denote subdivisions of these regulations.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 65092, 65351, 65352, 65352.3, 65352.4, 65562.5, Government Code; Sections 7050.5, 8010, 8011, 8012, 8013, 8014, 8015, 8016, 8017, 8018, 8019, 8020, 8021, 8029, 8030, Health and Safety Code; Sections 5097.9, 5097.91, 5097.92, 5097.93, 5097.94, 5097.95, 5097.96, 5097.97, 5097.98, 5097.99, 5097.991, 5097.993, 5097.994, 21073 and 21080.3.1, Public Resources Code.

Article 2 Definitions

§ 29004 Appropriate Dignity

"Appropriate dignity" means a manner or style that respects and accommodates the cultural values, use and traditions of Most Likely Descendants in the treatment and disposition of Native American human remains and associated items for purposes of reinterment pursuant to Public Resources Code section 5097.98, subdivision (e).

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Section 65562.5, Government Code; Sections 5097.9, 5097.98, 5097.993, Public Resources Code.

§ 29005 Associated Items

"Associated Items" means items found with or near Native American human remains for which it can be reasonably concluded that they were intentionally placed or buried with Native American human remains at the time of interment or later as part of funerary practices, death rites or ceremonies. For purposes of Chapters 1.75 and 1.76 of the Public Resources Code, "Associated items" is synonymous with "associated grave goods," "associated grave artifacts," "items associated with the human remains," "Native American artifacts taken from a Native American grave or cairn," "items associated and buried with Native American human remains," and "items associated with Native American human burials."

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Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, 5097.99 and 5097.991, Public Resources Code.

§ 29006 Burial or Burial Site

For purposes of these regulations, "burial" or "burial site" means, except for cemeteries and graveyards protected under other existing law, a natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the funerary practices, death rites or ceremonies of Native American people. "Burial" or "burial site" is synonymous with "grave" or "cairn" for purposes of Section 5097.99 of the Public Resources Code.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, 5097.99, Public Resources Code.

§ 29007 California Native American Tribe

For purposes of Sections 65092, 65351, 65352, 65352.3, 65352.4 and 65562.5 of the Government Code, Division 5, Chapters 1.75 and 1.76 of the Public Resources Code, and Sections 21073 and 21080.3.1 of the Public Resources Code, "California Native American Tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for purposes of Chapter 905 of the Statutes of 2004. For purposes of Government Code section 65352.4, "Native American tribe" is synonymous with "California Native American tribe."

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 65092, 65351, 65352, 65352.3, 65352.4, 65562.5, Government Code; Sections 5097.92, 5097.94, 21073, and 21080.3.1, Public Resources Code.

§ 29008 Chairperson

"Chairperson" means the person elected by the members of the Native American Heritage Commission to serve as chairperson of the Commission.

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Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.91 and 5097.94, Public Resources Code.

§ 29009 Cultural Affiliation

"Cultural affiliation" means a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day California Native American tribe or tribes and an identifiable earlier tribe or group that occupied a particular area. Cultural affiliation is established when the preponderance of evidence, based on geography, kinship, biology, archaeology, anthropology, linguistics, folklore, oral tradition, historical evidence, or other information or expert opinion, reasonably leads to a conclusion of shared group identity between a present day California Native American tribe or tribes and a identifiable earlier tribe or group that occupied a particular area.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 21073, 21080.3.1, Public Resources Code.

§ 29010 Culturally Appropriate Treatment

"Culturally appropriate treatment" means treatment of Native American human remains and associated items consistent with the cultural values, traditions and use of the Most Likely Descendants. "Culturally appropriate treatment" may be ascertained from a review of the site of the discovery of Native American human remains utilizing cultural and archaeological standards and information. For purposes of Chapter 1.75 of Division 5 of the Public Resources Code, "culturally appropriate treatment" is synonymous with "sensitive treatment and disposition."

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29011 Further and Future Subsurface Disturbance

"Further and future subsurface disturbance" means any below ground disturbance within a reasonable distance of no less than six feet of Native American human remains and/or associated items reinterred pursuant to subdivision (e) of Public Resources Code section 5097.98.

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Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29012 Generally Accepted Cultural or Archaeological Standards or Practices

"Generally Accepted Cultural or Archaeological Standards or Practices" shall include, but not be limited to, the following non-invasive standards or practices:

- (a) No further excavation or disturbance of a site where Native American human remains and/or associated items are discovered except as necessary to protect the site in accordance with Section 29201.
- (b) Standards or practices commonly used by qualified archaeologists to protect archaeological sites as work has stopped from light, heat, wind, moisture, movement, erosion, friction or any physical contact, theft, and vandalism when no one is present to protect them.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29013 Landowner

"Landowner" means the owner of land on which Native American human remains are discovered, reinterred, or preserved in place.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29014 Most Likely Descendants

"Most Likely Descendants" means a California Native American tribe or consortium of California Native American tribes identified by the Executive Secretary or their staff designee to most likely be the lineal descendants of the Native American person or persons whose remains have been discovered, subsequently reinterred or preserved in place. There may be more than one tribe identified as Most Likely Descendants, and a tribe or consortium of tribes may serve as Most Likely Descendants.

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Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29015 Multiple Native American Human Remains

"Multiple Native American Human Remains" means the remains of more than one Native American human, whether an inhumation or cremation, and in any state of decomposition or skeletal completeness.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 7050.5, Health and Safety Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29016 Native American Human Remains

"Native American Human Remains" are human remains determined by a county coroner pursuant to Health and Safety Code section 7050.5 to be the remains of a Native American.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Section 7050.5, Health and Safety Code; Sections 5097.94, 5097.98, Public Resources Code.

§ 29017 Nondestructive Removal and Analysis

"Nondestructive Removal and Analysis" means the removal and analysis of Native American human remains without further damage, deterioration, or decomposition.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 290218 Parliamentarian

"Parliamentarian" means the Commissioner appointed by the Commission Chairperson to serve as Parliamentarian of the Commission and insure that parliamentary procedures are followed during Commission meetings.

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Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.91, 5097.94, Public Resources Code.

§ 29019 Project

For purposes of this Chapter, "Project" is synonymous with the definition of "project" under Public Resources Code section 21065 and also means any ground-disturbing activity that results in the inadvertent discovery of Native American human remains.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, 21065, Public Resources Code.

§ 29020 Qualified Archaeologist

"Qualified archaeologist" means an archaeologist registered with the Registry of Professional Archaeologists who has experience with an area and the tribes within that area in which he or she is practicing archaeology.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29021 Reinterment

"Reinterment" means the interment and reburial of previously disinterred human remains.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, 5097.98, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29022 Sacred Lands Inventory

"Sacred Lands Inventory" means the inventory of places maintained by the Commission pursuant to Public Resources Code section 5097.94, subdivision (a) of special religious or social significance to Native Americans and known graves and

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cemeteries of Native Americans located on private land and the inventory maintained by the Commission pursuant to Public Resources Code section 5097.96 of Native American sacred places located on public lands.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.96, Public Resources Code.

§ 29023 Secretary

"Secretary" means the Commissioner elected by the members of the Native American Heritage Commission to serve as Secretary of the Commission.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Sections 5097.91, 5097.94, Public Resources Code. Reference: Sections 5097.91, 5097.94, Public Resources Code.

§ 29024 Traditional Tribal Territory

"Traditional tribal territory" means the geographic area historically or prehistorically occupied by a California Native American tribe.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.92, 5097.94, 21080.3.1, Public Resources Code.

§ 29025 Traditionally and Culturally Affiliated

"Traditionally and culturally affiliated" means the affiliation between a present-day California Native American tribe and a geographic area the tribe affirms it occupied in when such residence can be reasonably traced, historically or prehistorically. Traditional and cultural affiliation is not solely based on the history of residence of any individual tribal member's ancestors but on the history of residence of the tribe as a whole.

§ 29026 Vice Chairperson

"Vice Chairperson" means the Commissioner elected by the members of the Native American Heritage Commission to serve as Vice Chairperson of the Commission.

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Note: Authority cited: Sections 11152, 11342.2, Government Code; Section
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CHAPTER 2 THE COMMISSION -- RESERVED

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CHAPTER 3 MOST LIKELY DESCENDANTS, NATIVE AMERICAN HUMAN REMAINS,
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Article 1 **Procedures for Protecting Native American Human Remains
Pending Treatment and Disposition; Procedure for Identifying
Most Likely Descendants**

§ 29201 Procedure for Protecting Native American Human Remains and
Associated Items Pending Conferral with Most Likely Descendants

Native American human remains and associated items that have been discovered or unearthed shall be protected *in situ* prior to conferral with the Most Likely Descendants by the landowner on whose property the remains and associated items were found, unless removal is necessary to prevent immediate damage to the remains and associated items. *In situ* preservation shall include such feasible measures to protect the remains and associated items from light, heat, wind, moisture, movement, erosion, friction or any physical contact, theft and vandalism. Removal, if necessary, shall be completed by a qualified archaeologist.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29202 Emergency Removal of Native American Human Remains and
Associated Items Prior to Identification of or Conferral with the Most
Likely Descendants

- (a) Generally speaking, Native American human remains and/or associated items are to be left in place. If *in situ* preservation poses a serious risk of immediate damage to Native American human remains and/or associated items prior to the identification of or conferral with the Most Likely Descendants, the determination whether the remains and/or associated items need to be removed immediately shall be made by a qualified archaeologist. Removal, if necessary, shall be completed by a qualified archaeologist at the landowner's expense. Circumstances necessitating removal shall be limited to unavoidable acts of nature or unintentional acts including, but not limited to, flooding, rain, fire, and subterranean movement.
- (b) In the event that removal of Native American human remains and/or associated items is required to avoid immediate damage before the Most Likely Descendants have been identified or have inspected the site where the remains

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and associated items were discovered, the remains and associated items shall be removed, stored, and preserved carefully and respectfully in containers

appropriate for the respectful storage of human remains. The type, provenience and state of the remains and associated items shall be documented by a qualified archaeologist upon removal and, if reinterred where discovered, upon reinterment. Storage and preservation of the remains and associated items shall be without any destructive testing or analysis pending conferral with the Most Likely Descendants, and on-site, if possible, with appropriate security.

- (c) In the event that removal of Native American human remains and/or associated items is necessary in order to avoid immediate damage after the Most Likely Descendants have inspected the site where the remains and associated items were discovered but before the Most Likely Descendants have made a recommendation as to treatment and disposition, the remains and associated items shall be removed and stored by a qualified archaeologist in accordance with paragraph (b) above
- (d) Disinterred Native American human remains shall always be kept with their associated items in containers appropriate for the storage of human remains in accordance with paragraph (b) above

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29203 Procedure for Identification of Most Likely Descendants

Most Likely Descendants may be identified on an individual tribal basis, a rotational basis, as joint Most Likely Descendants for the same project, or as multiple Most Likely Descendants for a single project that overlaps multiple traditional tribal territories.

(a) Identification of Most Likely Descendants

Upon receiving notification of the discovery of Native American human remains from a representative of a county coroner's office in conformance with Health and Safety Code section 7050.5, subdivision (c), the Executive Secretary or their staff designee, absent unforeseen difficulties, will attempt to identify the Most Likely Descendants for the Native American(s) whose remains have been discovered within two business days of the NAHC receiving the notification. Identified Most Likely Descendants will have two business days to accept or decline the

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identification. Most Likely Descendants identifications will be made only after a county coroner has identified discovered remains as Native American.

(b) Confidentiality of Location of Native American Burials

In order to protect the immediate vicinity of Native American human remains from damage or from disturbance by further development activity prior to conferral with the Most Likely Descendants, the landowner and the county coroner's office shall keep confidential the location of Native American human remains discovered on the landowner's property except as necessary to comply with Health and Safety Code section 7050.5. The location of Native American human remains is exempt from disclosure by the county coroner under Government Code sections 6254 (r) and 6254.10.

(c) Notice of Identification to the Most Likely Descendants and Landowner

The Executive Secretary or their staff designee will provide written notice of the Most Likely Descendants identification to the landowner within one business day of the Most Likely Descendants accepting the identification. Only the tribal chairperson, chief, president or captain of the tribe identified as Most Likely Descendants will be provided notice of the identification on behalf of the tribe unless the tribe's governing body designates in writing an alternate and/or additional recipient(s) to receive notice.

(d) Inability of the Executive Secretary or Their Staff Designee to Identify Most Likely Descendants

When the Executive Secretary or their staff designee is unable to identify Most Likely Descendants for Native American human remains, the Executive Secretary or their staff designee will provide written notice of said inability to the landowner on whose property Native American human remains were discovered. The inability of the Executive Secretary or of their staff designee to identify Most Likely Descendants shall not be presumed and acted upon pursuant to Public Resources Code section 5097.98, subdivision (e) in the absence of written notification pursuant to this subsection.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Section 7050.5, Health and Safety Code; Sections 5097.94, 5097.98, Public Resources Code.

§ 29204 Identification of Most Likely Descendants -- Factors Considered

(a) Identification of Most Likely Descendants

The identification of Most Likely Descendants by the Executive Secretary or their staff designee is an approximate determination based on weighing evidence supporting the likelihood that a California Native American tribe or tribes are the

Most Likely Descendants of the Native American or Native Americans whose remains have been discovered. Such determinations will be made with the best information on record with the Commission at the time the Executive Secretary or his or her staff designee receives notice from a representative of a county coroner's office that Native American human remains have been inadvertently discovered.

(b) Factors Considered When Identifying Most Likely Descendants

The factors considered by the Executive Secretary or their staff designee when identifying Most Likely Descendants include, but are not limited to:

- (i) The geographic area of tribal traditional and cultural affiliation, tribal territory, known former tribal reservation or tribal rancheria, and/or tribal traditional specific village locations where the remains were discovered;
- (ii) Evidence supporting the likelihood of a California Native American tribe's lineage to the indigenous inhabitants of the geographic area of cultural affiliation, traditional tribal territory, known former tribal reservation or tribal rancheria, or tribal traditional specific villages where the remains were found. Evidence that will be considered to prove a tribe's lineage shall include, but not be limited to, the following:
 - A. Evidence of a California Native American tribe's cultural affiliation with the indigenous inhabitants of the area where the remains were found. Such evidence shall be based on geography, kinship, biology, archaeology, anthropology, linguistics, folklore, oral tradition, historical evidence, or other information or expert opinion that reasonably lead to such a conclusion.
 - B. Genealogies, ethnographic studies, anthropological or historical studies, or other credible evidence tracing a California Native American tribe's genealogical lineage to the indigenous ancestors who occupied the traditional tribal territory, known tribal reservation or tribal rancheria, or traditional tribal village site where the remains were discovered;
 - C. The historical or prehistorical time period during the indigenous ancestors to whom a California Native American tribe's cultural affiliation or genealogical lineage can be traced occupied the area where the remains were discovered;

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- D. Tribal territory and cultural affiliation maps provided by California Native American tribes, ethnographers, anthropologists, qualified archaeologists, universities, colleges, academics with expertise in California Native American studies, professional cartographers, or other credible sources;
- E. Primary sources of authority on California Native American tribes' geographic areas of traditional and cultural affiliation, including, but not limited to, Robert F. Heizer, The Handbook of North American Indians, Volume 8 (Smithsonian Institution, 1978).

These factors are not listed in order of consideration or merit.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29205 Rotation of Most Likely Descendants Identifications When More Than One Tribe of the Same Cultural Affiliation Shares Traditional Tribal Territories or When Traditional Tribal Territories Overlap; Tribal Consortia

- (a) When more than one California Native American tribe of the same cultural affiliation can trace their lineage to indigenous ancestors who occupied the same or overlapping traditional tribal territory where Native American human remains are discovered, the identification of Most Likely Descendants may be rotated among the tribes using a rotation list created by the Executive Secretary or their staff designee for that purpose. Tribes can be added or removed from the rotation list at the discretion of the Executive Secretary or their staff designee if subsequent evidence as provided for in section 29204, subparagraph (ii) supports the addition or removal of a tribe from the rotation list.
- (b) When two or more California Native American tribes of the same cultural affiliation have formed a consortium for the purpose of making recommendations regarding the treatment and disposition of Native American human remains discovered in the traditional tribal territory of any of the tribes in the consortium, the tribal consortium will be identified as Most Likely Descendants on the same basis as individual tribes as if the tribal consortium members were one tribe and their individual traditional tribal territories were one traditional tribal territory. Tribal consortia shall provide the NAHC notice of the formation of, or dissolution of, a tribal consortium and a list of the consortium member tribes. Each tribe in the

consortium shall meet the requirements of subdivision (b) of section 29215.
A Notice of Formation of Tribal Consortium and sample notice of
authorization form is provided in Appendix A of these regulations.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section
5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public
Resources Code.

§ 29206 Joint Most Likely Descendants Identifications When Tribes of
Different Cultural Affiliations Have Overlapping Tribal Territories

When more than one California Native American tribe with different cultural
affiliations could be identified as Most Likely Descendants for the remains of the
same Native American or Native Americans discovered in overlapping tribal
territories, they may be provided the option to serve as Joint Most Likely
Descendants. If a tribe declines to serve as Most Likely Descendants, the tribe or
tribes that do not decline to serve may serve as the Most Likely Descendants.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section
5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public
Resources Code.

§ 29207 Most Likely Descendants Identifications on a Project or Site Basis;
Multiple Most Likely Descendants Identifications for a Single Project
Overlapping One or More Traditional Tribal Territories; Continuing
Identifications for Remains Reinterred or Preserved in Place on the
Landowner's Property

- (a) Most Likely Descendants are identified as such for Native American human
remains discovered in the geographic area of a single project for which the
project proponent, person or entity causing the ground-disturbing activity
remains the same. If the remains are reinterred on the landowner's property
within the geographic area of a single project, the Most Likely Descendants
remain so identified until the tribe or tribal consortium identified as Most Likely
Descendant ceases to exist or declines to serve pursuant to Section 29211.
- (b) If Native American human remains are discovered in the same location at a later
date by virtue of a different project, different Most Likely Descendants may be
identified.
- (c) For multiple discoveries of Native American human remains in the geographic
area of a single project that overlaps adjacent traditional tribal territories for

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different tribes, Most Likely Descendants will be identified for each traditional tribal territory within the project area or discovery site.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29208 Alternate Most Likely Descendants Identifications When Most Likely Descendants Cannot or Will Not Serve

When Most Likely Descendants cannot serve, decline to serve, or fail to timely accept the identification, the Executive Secretary or their staff designee may identify an alternate Most Likely Descendant in accordance with the procedures in Sections 29203, 29204, 29205 and 29206.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29209 Authorized Representative(s) of Most Likely Descendants

The Most Likely Descendants identified for Native American human remains may authorize a representative or representatives to discuss and confer with the landowner or the landowner's authorized representative(s). The Most Likely Descendants' authorized representative(s) shall provide proof of their authorization to the landowner and to the Commission. Authorized representatives of Most Likely Descendants who have been so authorized on the tribe's or consortium's current Most Likely Descendants registration form pursuant to Section 29217 shall provide written proof of authorization to the landowner or his or her authorized representative. The Most Likely Descendants' authorized representative(s) shall be considered an agent of the Most Likely Descendants for purposes of Public Resources Code section 5097.98. The Most Likely Descendants registration form and sample notice of authorization is provided in Appendix B of these regulations.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

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§ 29210 Replacement of Most Likely Descendants' Authorized
Representative(s) Before Treatment and Disposition of Remains

(a) Requirements for Replacing Most Likely Descendants' Authorized
Representative(s) Before Treatment and Disposition of Remains.

Most Likely Descendants' authorized representative(s) may be replaced before the treatment and disposition of the Native American human remains for which the Most Likely Descendants have been identified has occurred. Replacement of the Most Likely Descendant's authorized representative(s) may occur for the following reasons:

- i. The Most Likely Descendants' authorized representative(s) violated local, state, or federal law in carrying out his, her or their duties as authorized representative(s) of the Most Likely Descendants.
- ii. The Most Likely Descendants' authorized representative(s) violated the Most Likely Descendants and Authorized Representative(s) Code of Ethics.

Once replaced, the authorized representative(s) shall not represent the Most Likely Descendants in the future without the consent of the Executive Secretary or their staff designee.

(b) Time Period and Procedure for the Most Likely Descendants to Provide a
Replacement Authorized Representative or Representatives.

The Executive Secretary or their staff designee, will seek a replacement for a Most Likely Descendants' authorized representative(s) from the Most Likely Descendants when required within 1 business day from when the Executive Secretary or their staff designee became aware of the occurrence of conditions necessitating the replacement. The Executive Secretary or their staff designee, will contact the Most Likely Descendants within one business day to ask the Most Likely Descendants to identify a replacement authorized representative or representatives in the event that a replacement is necessitated pursuant to subsection (a) above.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29211 Death or Nonexistence of Most Likely Descendants After Reinterment
or Preservation in Place of Native American Remains on the
Landowner's Property

In the event of the death of an individual identified as Most Likely Descendant for Native American human remains reinterred or preserved in place on the landowner's property prior to the adoption of these regulations, or the nonexistence of a tribe identified as Most Likely Descendants for Native American human remains that have been reinterred or preserved in place on the landowner's property, Most Likely Descendants shall be identified should the remains for which an individual Most Likely Descendant or Most Likely Descendants were previously identified be inadvertently disturbed.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29212 Authorized Representatives of Landowners

Authorized representatives of landowners shall provide written proof of their authorization to represent the landowner to the Most Likely Descendants identified for the Native American human remains on the landowner's property and to the Commission. The landowner's authorized representative shall be considered an agent of the landowner for purposes of Public Resources Code section 5097.98. A sample authorization form is provided in Appendix C of these regulations.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29213 Notification of Most Likely Descendants Identifications

Any member of the public may request to be notified of the identification of Most Likely Descendants for a project.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

Article 2 Most Likely Descendants List

§ 29214 Inclusion on Most Likely Descendants List

(a) Registration; Approval by the Executive Secretary.

In order to be identified as Most Likely Descendants, a California Native American tribe or consortium of California Native American tribes must be on the Most Likely Descendants List maintained by the Commission. A California Native American tribe or consortia of tribes must register to be included on the Most Likely Descendants List. Registrations must be in writing, using the Most Likely Descendants Registration Form, and must include the name, address, phone number and email address for the tribe's chairperson, chief, president or captain, or for a consortium's contact person and authorized representative(s). Information substantiating that a tribe or consortium of tribes meets the criteria for inclusion on the Most Likely Descendants list must be included with the registration form. The Executive Secretary or their staff designee must approve in writing a tribe's or tribal consortium's inclusion on the list. Tribes or consortia of tribes that have met the current criteria for inclusion on the Most Likely Descendants List prior to the adoption of these regulations will not be required to provide information substantiating that they meet the criteria for inclusion.

(b) Criteria for Inclusion on Most Likely Descendants List

After the adoption of these regulations, only California Native American tribes or a consortium of California Native American tribes may be included on the Most Likely Descendants List. Tribes or each tribe in a consortium of tribes must meet the following criteria to be included on the list:

(i) California Native American Tribe

A California Native American tribe that is one of the following may be included on the Most Likely Descendants List:

- (A) A Federally recognized tribe with all or part of its sovereign tribal territory within the State of California; or
- (B) A non-federally recognized California Native American tribe that is on the list maintained by the NAHC for purposes of Chapter 905 of Statutes of 2004 (SB 18).

Each tribe in a consortium of tribes requesting inclusion must demonstrate that they meet one of these criteria in order for the consortium to be included on the list as a consortium.

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Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29215 Prior Identifications of Individuals as Most Likely Descendants for Remains Reinterred or Preserved in Place on a Landowner's Property; Removal of Individuals from the Most Likely Descendants List

An individual identified as a Most Likely Descendant for Native American human remains that were subsequently reinterred or preserved in place on a landowner's property prior to the adoption of these regulations shall remain the Most Likely Descendant only for those remains until the individual is deceased or declines to serve, but the individual shall not be included on the Most Likely Descendants list. Individuals will not be eligible for future Most Likely Descendants identifications after the adoption of these regulations and shall be removed from the Most Likely Descendants list.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29216 Removal from Most Likely Descendants List

The Executive Secretary or their staff designee may remove a California Native American tribe or consortium of California Native American tribes from the Most Likely Descendant list for either or both of the following reasons:

- (i) The tribe or consortium requested removal;
- (ii) The tribe or consortium does not meet the criteria for inclusion on the list.

The Executive Secretary or their staff designee shall provide written notice to a tribe or consortium of tribes of the Commission's intention to remove the tribe or consortium from the list. A tribe or consortium of tribes will have 30 business days from receipt of the written notice to request to be kept on the list or to provide in writing evidence showing that one of the criteria for inclusion on the list has been met. Failure to timely request to be kept on the list or to provide written evidence showing that one of the criteria for inclusion on the list has been met may result in removal from the list until such time as the tribe or consortium requests inclusion and demonstrates that one of the criteria for inclusion has been met.

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§ 29217 Most Likely Descendants List Registration Form; Update of Contact Information

California Native American tribes or consortia of California Native American tribes must annually update the contact information for their chairperson, chief, president or captain, and for their contact person(s) and authorized representative(s).

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

Article 3 Most Likely Descendants' Duties

§ 29218 Report of Treatment and Disposition

The Most Likely Descendants shall file a report with the Executive Secretary within 60 days of the treatment and disposition of the Native American human remains for which they have been identified as Most Likely Descendants. This report shall include:

- (a) The date when the treatment and disposition of the Native American human remains occurred;
- (b) Whether the Native American human remains were reinterred or preserved in place on the landowner's property;
- (c) If the Native American human remains were reinterred on the landowner's property, when and how the landowner complied with subdivision (e) of Public Resources Code section 5097.98; and
- (d) Any non-confidential correspondence or agreements between the landowner and the Most Likely Descendants regarding the treatment and disposition of the Native American human remains.

Most Likely Descendants not in compliance with this section will not be identified as Most Likely Descendants for additional discoveries of Native American human remains until their compliance is achieved.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

**Article 4 Conferral Between Most Likely Descendants and Landowners;
Mediation of Disputes Between Most Likely Descendants and
Landowners Pursuant to Public Resources Code section 5097.94,
Subdivision (k)**

§ 29219 Conferral Between Most Likely Descendants and Landowners

Conferral between the Most Likely Descendants and the landowner should begin as soon as the Most Likely Descendants are identified. If the parties cannot reach an agreement as to the treatment and disposition of the Native American human remains and associated items within 48 hours of beginning conferral and they do not mutually agree to extend discussions, either party may apply for mediation by Commission staff. Only the landowner, the Most Likely Descendants, or their authorized representatives shall confer pursuant to Public Resources Code section 5097.94, subdivision (k).

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29220 Confidentiality of Discussions

The Most Likely Descendants and the landowner, or their authorized representatives, shall recognize each party's need for confidentiality of information provided to each other when conferring on the treatment and disposition of Native American human remains and associated items.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29221 Application for Mediation

Upon application of either the Most Likely Descendants or the landowner, the Commission shall mediate a dispute between the Most Likely Descendants identified for Native American human remains on a landowner's property and the landowner regarding the treatment and disposition of the remains. The application for mediation must be in writing, be transmitted by fax or email to the Commission, and shall state the following:

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- (i) The party requesting the mediation;
- (ii) The issues in dispute (E.g., proposed location of reinterment, method of treatment and disposition, whether an item is associated with a Native American burial); and
- (iii) The position of the applicant on each issue.

Commission staff will transmit the application to the non-requesting party upon receipt and contact the parties within one business day of receiving the application to schedule a mediation session at a time agreeable to both parties. The sample Application for Mediation can be found in Appendix D of these regulations. No party will be required to participate in mediation.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

§ 29222 Mediation Procedures

(a) Parties to Mediation

Mediation sessions will be conducted by Commission staff or designated consultants who are trained in mediation. Only Most Likely Descendants, the landowners, and/or their authorized representatives may participate. Authorized

representatives must provide Commission staff proof of authorization in writing. If an authorized representative participates on behalf of a party, that party will be bound by the representations and positions of its authorized representative.

(b) Conduct of Mediation Sessions

Mediation sessions may be conducted telephonically, in person, or by video conferencing. The Commission staff member assigned to the mediation will, in the course of the mediation:

- (i) Determine the issues in dispute;
- (ii) Determine the positions of each party on each issue in dispute;
- (iii) Inform the parties of their legal obligations in the event that an agreement is not reached or if the landowner rejects the recommendations of the Most Likely Descendants; and
- (iv) Attempt to bring the parties to an agreement using standard mediation practices.

Mediation sessions may continue as long as mutually agreed upon by the parties or by their authorized representatives. If an agreement is reached, the parties or their authorized representatives shall memorialize the agreement in writing and provide it to the Commission excluding the terms that are confidential. Commission staff shall not coerce or threaten any party in order to secure agreement between the parties.

(c) Conclusion of Mediation

The mediation shall be considered concluded when one of the following has occurred:

- (i) The parties or, in the absence of a party, that party's authorized representative or representatives, have reached an agreement and have memorialized it in writing;
- (ii) Any party or, in the absence of a party, that party's authorized representative or representatives refuse to continue the mediation; or
- (iii) The landowner or his or her authorized representative or representatives continue to reject the recommendations of the Most Likely Descendants or their authorized representative or representatives.

The Commission staff person assigned to the mediation shall memorialize in writing the reasons why agreement was not possible and provide copies of the writing to the parties. A copy shall be kept in the Commission's files.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

**Article 5 Reinterment of Native American Remains and Associated Items
on Landowner's Property**

**§ 29223 Reinterment of Native American Remains and Associated Items on
Landowner's Property**

- (a) When the landowner or his or her authorized representative reinters Native American human remains and/or their associated items pursuant to subdivision (e) of Public Resources Code section 5097.98, the remains and associated items shall be reinterred by a qualified archaeologist at the expense of the landowner. A qualified archaeologist shall document the state and nature of the remains that are reinterred.

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- (b) If the landowner reinterers Native American human remains on its property pursuant to subdivision (e) of Public Resources Code section 5097.98, the landowner shall provide proof of compliance with Section 5097.98, subdivision (e) to the Commission within 30 days of the reinterment. The period for providing proof of compliance may be extended up to 180 days from the date of reinterment by the Executive Secretary or their staff designee for good cause shown by the landowner, the Most Likely Descendants, or both. The decision by the Executive Secretary or their staff designee extending the time period for providing proof of compliance shall be provided in writing to both parties.
- (c) In the event that there is or has been subsurface ground disturbance within six feet of the reinterred remains and/or associated items, the landowner shall contact the Commission. The Commission will notify the Most Likely Descendants, who shall have the right to inspect the site at a time mutually agreed upon by the landowner and the Most Likely Descendants to determine if the remains and/or associated items have been damaged. If the remains and/or associated items have been damaged or are at risk of being damaged by subsurface ground disturbance, the Most Likely Descendants shall inform the Commission, which may take legal action to ensure the landowner's compliance with subdivision (e) of Public Resources Code section 5097.98.
- (d) Intentional subsurface disturbance of Native American remains that have been reinterred on a landowner's property pursuant to subdivision (e) of Public Resources Code section 5097.98 does not constitute an accidental or inadvertent discovery or recognition of those remains for purposes of Public Resources Code sections 5097.98. The intentional subsurface disturbance of remains reinterred pursuant to Public Resources Code section 5097.98, subdivision (e) by the landowner, its agents and assigns, the landowner's authorized representatives, or anyone with the landowner's permission shall be considered a violation of that section.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code; California Code of Regulations, Title 14, Section 15064.5.

**Article 6 Repatriation of Native American Remains and Associated Items
to Most Likely Descendants; Preservation in Place**

§ 29224 Repatriation of Native American Remains to Most Likely Descendants

Native American human remains and associated items may be repatriated to the Most Likely Descendants pursuant to Public Resources Code section 5097.98, subdivision (b)(1)(C) and section 5097.991. The landowner shall not possess the Native American remains and/or associated items found on his or her property except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivisions (k)(1) and (l) of Public Resources Code section 5097.94 or pursuant to Public Resources Code section 5097.98.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, 5097.991, Public Resources Code.

**Article 7 Public Records Act Exemption from Disclosure of Native
American Burials**

§ 29225 Confidentiality of Native American Burials

Records of Native American graves, cemeteries and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Commission, another state agency, or a local agency are exempt from disclosure to the public pursuant to subdivision (r) of Government Code section 6254. In order to protect a site where Native American human remains have been discovered, county coroners and lead agencies under the California Environmental Quality Act, Public Resources Code section 21000 et seq., shall not disclose the location of such sites except as necessary to comply with Health and Safety Code section 7050.5.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Section 7050.5, Health and Safety Code; Sections 5097.94, 5097.98, Public Resources Code.

**Article 8 Most Likely Descendants and Authorized Representatives Code
of Ethics; Commissioner Involvement in Conferrals or Mediations**

**§ 29226 Most Likely Descendants and Authorized Representatives Code of
Ethics**

Most Likely Descendants and their authorized representatives shall abide by the following Code of Ethics when serving in the capacity of Most Likely Descendants or representing the Most Likely Descendants. Most Likely Descendants and their authorized representatives shall not:

- (a) Have a financial interest in the treatment and disposition of the Native American human remains and/or associated items for which the Most Likely Descendants have been identified as Most Likely Descendants. Most Likely Descendants and their authorized representatives shall not serve as paid archaeological or cultural resources monitors for projects where the remains for which the Most Likely Descendants have been identified were discovered;
- (b) Use their identification as Most Likely Descendants or authorized representatives for the financial gain of others;
- (c) Represent themselves as Most Likely Descendants or authorized representatives of Most Likely Descendants for projects where Native American human remains or associated items have yet to be discovered;
- (d) Sell, possess, transfer or convey Native American human remains or associated items for which they have been identified as Most Likely Descendants, except as provided by law;
- (e) Disclose the location of Native American human remains or associated items that have been reinterred on a landowner's property pursuant to subdivision (e) of Public Resources Code section 5097.98 or preserved in place pursuant to subdivision (b)(1)(B) of Public Resources Code section 5097.98 except as necessary to protect the location or as required by law;
- (f) Represent themselves as professional Most Likely Descendants, a professional authorized representative, or professional authorized representatives of Most Likely Descendants; and
- (g) Charge the landowner, whether by payment or in kind, for serving as the Most Likely Descendants or as the Most Like Descendants' authorized representative or representatives.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

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§ 29227 Commissioner Involvement in Conferrals or Mediations

- (a) A Commissioner shall not use his or her position as a Commissioner to exert undue influence or achieve an unfair advantage in conferrals or mediations with landowners regarding the treatment and disposition of Native American human remains and/or associated items for which a Commissioner's tribe or consortium to which the Commissioner's tribe belongs has been identified as Most Likely Descendants.
- (b) A Commissioner should avoid, if possible, participating in conferrals or mediations with landowners regarding the treatment and disposition of Native American human remains and/or associated items for which the Commissioner's tribe or consortium to which the Commissioner's tribe belongs has been identified as Most Likely Descendants.
- (c) A Commissioner shall recuse himself or herself from any Commission consideration of legal action against a landowner to seek compliance with Public Resources Code section 5097.98 regarding Native American human remains and/or associated items for which the Commissioner's tribe or consortium of tribes to which the Commissioner's tribe belongs has been identified as Most Likely Descendants.

Note: Authority cited: Sections 11152, 11342.2, Government Code; Section 5097.94, Public Resources Code. Reference: Sections 5097.94, 5097.98, Public Resources Code.

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Appendix A

Native American Heritage Commission
Notice of Formation of Tribal Consortium for Most Likely Descendants
Identifications

(Public Resources Code Section 5097.98; California Code of Regulations, Title 14,
Section 29205, subdivision (b))

Name of Tribal Consortium _____

Date Tribal Consortium Was Formed: _____

Mailing Address : _____

Contact Person (Person Authorized by the Tribal Consortium to Receive Notice That
The Tribal Consortium Has Been Identified as Most Likely Descendants and to
Accept Identification):

Telephone Number(s) and Email Address For Contact
Person: _____

Additional Contact Person, If Any: _____

Telephone Number(s) and Email Address for Additional Contact
Person: _____

Authorized Representative(s) for Tribal Consortium (Person or Persons Authorized
by the Tribal Consortium to Confer with Landowners Regarding the Treatment and
Disposition of Native American human
remains): _____

Telephone Number(s) and Email Address for Authorized Representative(s) _____

Name of Each Tribe in the Tribal Consortium (Add Additional Pages If Necessary):

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Combined Area of Traditional Territories or Area of Traditional and Cultural
Affiliation for Tribal Consortium (Please identify, either individually or combined,
the Tribes' traditional territory or areas of traditional and cultural affiliation for
each Tribe in the Tribal Consortium as specifically as possible):

PLEASE PROVIDE SUPPORTING DOCUMENTATION DEMONSTRATING THE
FOLLOWING:

1. Each Tribe in the Tribal Consortium meets the criteria to be included on the
Most Likely Descendants List. The criteria to be included on the Most Likely
Descendants List are as follows (California Code of Regulations, Title 14,
Section 29214):

(ii) California Native American Tribe

A California Native American tribe that is one of the following may be
included on the Most Likely Descendants List:

- (C) A Federally recognized tribe with all or part of its sovereign tribal
territory within the State of California; or

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(D) A non-federally recognized California Native American tribe that is
on the list maintained by the NAHC for purposes of Chapter 905 of
Statutes of 2004 (SB 18).

2. The Tribal Consortium has authorized the Contact Person(s) and Authorized
Representative(s) to serve in those capacities.

On behalf of the (Name of Tribal Consortium) _____, I
affirm that this form and supporting documentation are true and correct to the best
of my knowledge and that I am authorized to submit them on behalf of the Tribal
Consortium.

Name (Printed) _____

Title: _____

Date: _____

Signature: _____

DRAFT

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Sample Form

Notice of Authorization

Authorized Representative(s) of Tribe or Tribal Consortium for
Conferral with Landowners for the Treatment and Disposition of Native American
Human Remains

(Public Resources Code section 5097.98; California Code of Regulations, Title 14,
Sections 29205, subdivision (b), 29209)

On (date) _____, the [Tribal Government of the (Name
of Tribe) _____] or [(Name of Tribal
Consortium) _____] authorized the following person(s)
to represent and act as (an) agent(s) on the behalf of the Tribe/Tribal Consortium as
Most Likely Descendants to confer with landowners regarding the treatment and
disposition of Native American human remains pursuant to Public Resources Code
section 5097.98:

Name(s) of Authorized Representative (s) and Title(s):

I affirm that the above-stated information is true and correct to the best of my
knowledge and I am authorized by the Tribal Government/Tribal Consortium to
represent it as such.

Name (Printed): _____

Title: _____

Signature: _____

Date: _____

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Appendix B

Native American Heritage Commission
Most Likely Descendants List
Registration Form
(Public Resources Code section 5097.98; California Code of Regulations, Title 14,
Sections 29209, 29214, 29217)

Name of Tribe: _____

Mailing Address: _____

Contact Person (Person Authorized by the Tribe to Receive Notice that Tribe has
been identified as Most Likely
Descendants): _____

Telephone Number(s) and Email Address for Contact Person: _____

Additional Contact Person: _____

Telephone Number(s) and Email Address for Additional Contact Person: _____

Authorized Representative(s) for the Tribe (Person or Persons Authorized by the
Tribe to Confer with Landowners Regarding the Treatment and Disposition of
Native American Human Remains): _____

Telephone Number(s) and Email Address for Authorized Representative(s) _____

Tribe's Traditional Territory or Area of Traditional and Cultural Affiliation (Please
identify as specifically as
possible): _____

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PLEASE PROVIDE SUPPORTING DOCUMENTATION DEMONSTRATING THE
FOLLOWING:

1. The Tribe meets the criteria to be included on the Most Likely Descendants List. The criteria to be included on the Most Likely Descendants List are as follows (California Code of Regulations, Title 14, Section 29214):

2.
 - (iii) California Native American Tribe

A California Native American tribe that is one of the following may be included on the Most Likely Descendants List:

(E) A Federally recognized tribe with all or part of its sovereign tribal territory within the State of California; or

(F) A non-federally recognized California Native American tribe that is on the list maintained by the NAHC for purposes of Chapter 905 of Statutes of 2004 (SB 18).

2. The Tribe has authorized the Contact Person(s) and Authorized Representative(s) to serve in those capacities.

On behalf of the (Name of Tribe) _____, I affirm that this form and supporting documentation are true and correct to the best of my knowledge and that I am authorized to submit them on behalf of the Tribe.

Name (Printed) _____

Title: _____

Date: _____

Signature: _____

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Sample Form

Notice of Authorization

Authorized Representative(s) of Tribe or Tribal Consortium for
Conferral with Landowners for the Treatment and Disposition of Native American
Human Remains
(Public Resources Code section 5097.98; California Code of Regulations, Title 14,
Sections 29205, subdivision (b), 29209)

On (date) _____, the [Tribal Government of the (Name
of Tribe) _____] or [(Name of Tribal
Consortium) _____] authorized the following person(s)
to represent and act as (an) agent(s) on the behalf of the Tribe as Most Likely
Descendants to confer with landowners regarding the treatment and disposition of
Native American ancestral remains pursuant to Public Resources Code section
5097.98:

Name(s) of Authorized Representative (s) and Title(s):

I affirm that the above-stated information is true and correct to the best of my
knowledge and I am authorized by the Tribal Government/Tribal Consortium to
represent it as such.

Name (Printed): _____

Title: _____

Signature: _____

Date: _____

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Appendix C

Native American Heritage Commission
Sample Form
Notice of Authorization
Authorized Representative(s) of Landowner(s) for
Conferral with Most Likely Descendants for the Treatment and Disposition of Native
American Human Remains
(Public Resources Code section 5097.98; California Code of Regulations, Title 14,
Section 29212)

On (date) _____, the (Name of
Landowner) _____] authorized the following person(s)
to represent and act as (an) agent(s) on the behalf of the landowner to confer with
Most Likely Descendants regarding the treatment and disposition of Native
American ancestral remains discovered on the landowner's property pursuant to
Public Resources Code section 5097.98:

Name(s) of Authorized Representative (s) and Title(s):

I affirm that the above-stated information is true and correct to the best of my
knowledge and I am authorized by the Landowner(s) to represent it as such.

Name (Printed): _____

Title: _____

Signature: _____

Date: _____

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Appendix D

Native American Heritage Commission
Application for Mediation Between Most Likely Descendants and Landowner(s)
(Public Resources Code sections 5097.94, subdivision (k), 5097.98, subdivision (e);
California Code of Regulations, Title 14, Sections 29221, 29222)

An application for mediation between Most Likely Descendants and Landowners
pursuant to Public Resources Code sections 5097.94, subdivision (k) and 5097.98,
subdivision (e) MUST BE IN WRITING and transmitted by fax or email to the Native
American Heritage Commission at:

Native American Heritage Commission

Fax: (916) 373-5471

Email: nahc@nahc.ca.gov

Commission staff will transmit the application to the non-requesting party upon
receipt and contact the parties within one business day of receiving the application
to schedule a mediation session at a time agreeable to both parties.

Name of Party Requesting Mediation (Applicant): _____

Date: _____

Telephone number: _____

Email: _____

Fax: _____

Mediation is requested by or on behalf of:

Most Likely Descendants _____
Landowner _____

1. Please describe the issues in dispute between the Most Likely Descendants and
the Landowner regarding the treatment and disposition of the Native American
human remains involved. (For example, proposed location of reinterment; method
of treatment and disposition; whether an item is associated with a Native American
burial):

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2. Please describe the Applicant's position on each of the issues stated above:

I affirm that I am authorized to request mediation on behalf of the party listed above:

Name (Printed): _____

Title: _____

Phone number: _____

Email: _____

Signature: _____

Mediation Procedures
(Public Resources Code section 5097.94, subdivision (k), 5097.98, subdivision (e);
California Code of Regulations, Title 14, Section 29222)

§ 29222 Mediation Procedures

(d) Parties to Mediation

Mediation sessions will be conducted by Commission staff or designated consultants who are trained in mediation. Only Most Likely Descendants, the landowners, and/or their authorized representatives may participate. Authorized representatives must provide Commission staff proof of authorization in writing. If an authorized representative participates on behalf of a party, that party will be bound by the representations and positions of its authorized representative.

(e) Conduct of Mediation Sessions

Mediation sessions may be conducted telephonically, in person, or by video conferencing. The Commission staff member assigned to the mediation will, in the course of the mediation:

- (iii) Determine the issues in dispute;
- (iv) Determine the positions of each party on each issue in dispute;
- (iii) Inform the parties of their legal obligations in the event that an agreement is not reached or if the landowner rejects the recommendations of the Most Likely Descendants; and
- (iv) Attempt to bring the parties to an agreement using standard mediation practices.

Mediation sessions may continue as long as mutually agreed upon by the parties or by their authorized representatives. If an agreement is reached, the parties or their authorized representatives shall memorialize the agreement in writing and provide it to the Commission excluding the terms that are confidential. Commission staff shall not coerce or threaten any party in order to secure agreement between the parties.

(f) Conclusion of Mediation

The mediation shall be considered concluded when one of the following has occurred:

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- (iv) The parties or, in the absence of a party, that party's authorized representative or representatives, have reached an agreement and have memorialized it in writing;
- (v) Any party or, in the absence of a party, that party's authorized representative or representatives refuse to continue the mediation; or
- (vi) The landowner or his or her authorized representative or representatives continue to reject the recommendations of the Most Likely Descendants or their authorized representative or representatives.

The Commission staff person assigned to the mediation shall memorialize in writing the reasons why agreement was not possible and provide copies of the writing to the parties. A copy shall be kept in the Commission's files.

DRAFT